

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 636

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Luciano "Lucky" Varela

AN ACT

RELATING TO TELECOMMUNICATIONS; ENACTING THE TELECOMMUNICATIONS DEVELOPMENT ACT; PROVIDING FOR GRANTS TO LOCAL RURAL GOVERNMENTS TO DEVELOP BUSINESS PLANS AND TO PURCHASE TELECOMMUNICATIONS SERVICES; PROVIDING FOR EXPENDITURES BY THE ECONOMIC DEVELOPMENT DEPARTMENT TO ENCOURAGE THE EXPANSION OF TELECOMMUNICATIONS INFRASTRUCTURE; DISTRIBUTING REVENUE FROM UTILITY INSPECTION FEES; AMENDING A CERTAIN SECTION OF THE NMSA 1978 CONCERNING ADMINISTRATIVE FINES; AMENDING THE NEW MEXICO TELECOMMUNICATIONS ACT TO PROVIDE FOR CERTAIN DETERMINATIONS BY THE PUBLIC REGULATION COMMISSION RELATED TO COMPETITION; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1 through 7 of this act may be cited as the "Telecommunications . 143282. 2

underscored material = new
[bracketed material] = delete

1 Development Act".

2 Section 2. [NEW MATERIAL] DEFINITIONS. -- As used in the
3 Telecommunications Development Act:

4 A. "board" means the telecommunications development
5 board;

6 B. "department" means the economic development
7 department; and

8 C. "telecommunications company" means a company
9 subject to the provisions of the New Mexico Telecommunications
10 Act.

11 Section 3. [NEW MATERIAL] TELECOMMUNICATIONS DEVELOPMENT
12 BOARD-- CREATED-- MEMBERS-- TERMS. --

13 A. The "telecommunications development board" is
14 created as a planning and review board administratively
15 attached to the economic development department. The board
16 shall consist of thirteen members as follows:

17 (1) the secretary of economic development, who
18 shall serve as chair of the board;

19 (2) four members representing local
20 governments;

21 (3) three members representing the business
22 community;

23 (4) one member representing Native American
24 communities;

25 (5) two members representing

underscored material = new
[bracketed material] = delete

1 telecommunications companies;

2 (6) one member experienced as an information
3 or telecommunications manager for the public schools; and

4 (7) one member experienced as an information
5 or telecommunications manager for a medical services entity.

6 B. Except for the secretary of economic
7 development, six of the initial members shall be appointed by
8 the governor for one-year terms and six shall be appointed by
9 the governor for two-year terms; thereafter, members shall be
10 appointed for two-year terms. Members may be removed only for
11 incompetence, neglect of duty or malfeasance in office and only
12 after receiving a notice of a hearing before the governor and
13 an opportunity to be heard. Vacancies shall be filled by
14 appointment by the governor for the remainder of the unexpired
15 term.

16 C. The board shall meet at the call of the chair
17 but not less than once each quarter. The department shall
18 provide staff to the board.

19 D. Public members of the board shall receive
20 reimbursement for per diem and mileage from the rural
21 telecommunications development fund pursuant to the Per Diem
22 and Mileage Act.

23 E. In providing staff to the board, paying per diem
24 and mileage to board members and providing other administrative
25 functions pursuant to the Telecommunications Development Act,

. 143282. 2

underscored material = new
[bracketed material] = delete

1 the department may expend so much of the rural
2 telecommunications development fund as is necessary; provided
3 that the total expenditures for those purposes in a fiscal year
4 shall not exceed fifty thousand dollars (\$50,000).

5 **Section 4. [NEW MATERIAL] BOARD--DUTIES.--The board**
6 **shall:**

7 **A. evaluate the availability of telecommunications**
8 **services in New Mexico and the needs for telecommunications**
9 **development;**

10 **B. designate those rural areas of the state that**
11 **are in need of telecommunications development;**

12 **C. develop guidelines to be used in accepting and**
13 **reviewing applications for development grants and for rewarding**
14 **those grants that will further telecommunications development**
15 **in those designated areas;**

16 **D. accept, review, modify and approve applications**
17 **from rural local governments for grants from the rural**
18 **telecommunications development fund to hire consultants,**
19 **approved by the board, to develop strategic telecommunications**
20 **business plans for those local governments; provided that:**

21 **(1) no application shall be approved for**
22 **funding unless the local government shows that it was developed**
23 **in coordination with business and community leaders; and**

24 **(2) no grant shall exceed ten thousand dollars**
25 **(\$10,000);**

. 143282. 2

underscored material = new
[bracketed material] = delete

1 E. accept, review, modify and approve applications
2 from rural local governments for grants from the rural
3 telecommu**n**ications development fund to purchase
4 telecommu**n**ications services provided by a telecommu**n**ications
5 company; provided that:

6 (1) no application shall be approved for
7 funding unless the local government shows that it was developed
8 in coordination with business and commu**n**ity leaders;

9 (2) the application shall be for
10 telecommu**n**ications services identified in a strategic
11 telecommu**n**ications business plan as telecommu**n**ications
12 components needed by the local government; and

13 (3) no grant shall exceed twenty percent of
14 the deposits into the rural telecommu**n**ications development fund
15 during the previous fiscal year unless a larger grant is
16 necessary to secure matching grants or contributions from other
17 entities;

18 F. evaluate proposals for expenditures of the
19 telecommu**n**ications development and competition fund and make
20 recommendations to the department concerning the approval of
21 those proposals;

22 G. pursue sources of funding for the rural
23 telecommu**n**ications development fund and the telecommu**n**ications
24 development and competition fund, including private grants or
25 donations and federal grants pursuant to federal
telecommu**n**ications-based programs that may or may not require

1 state matching funds;

2 H. advise and assist the economic development
3 department on matters relating to telecommunications
4 investments, telecommunications-dependent new businesses,
5 telemedicine, distance learning and other telecommunications
6 issues;

7 I. allocate distributions of the utility inspection
8 fee pursuant to Section 63-7-20 NMSA 1978 between the rural
9 telecommunications development fund and the telecommunications
10 development and competition fund pursuant to criteria
11 established by rule of the board; and

12 J. adopt such other rules as are necessary to
13 implement the provisions of the Telecommunications Development
14 Act.

15 Section 5. [NEW MATERIAL] ECONOMIC DEVELOPMENT

16 DEPARTMENT--ADDITIONAL DUTIES.--The department shall expend
17 balances of the telecommunications development and competition
18 fund for the purpose of stimulating and expanding investments
19 in telecommunications infrastructure in New Mexico. In making
20 expenditures from the fund, the department shall consider:

21 A. the needs identified by the board for the
22 development of telecommunications infrastructure;

23 B. the rural areas of the state identified by the
24 board as those areas most in need of additional
25 telecommunications infrastructure; and

C. proposals recommended by the board for
exenditure.

. 143282. 2

underscored material = new
[bracketed material] = delete

1 Section 6. [NEW MATERIAL] RURAL TELECOMMUNICATIONS
2 DEVELOPMENT FUND. --

3 A. The "rural telecommunications development fund"
4 is created in the state treasury. The fund shall consist of:

5 (1) contributions by a telecommunications
6 company that offset accrued unspent balances in a rural
7 extension fund pursuant to the provisions of Section 63-9A-8.4
8 NMSA 1978;

9 (2) the allocation by the board of
10 distributions from the utility inspection fee pursuant to
11 Section 63-7-20 NMSA 1978;

12 (3) private grants or contributions;

13 (4) legislative appropriations; and

14 (5) federal or local government grants.

15 B. Earnings to the fund shall be credited to the
16 fund, and the fund shall not revert at the end of any fiscal
17 year. The fund shall be administered by the board, and money
18 in the fund is appropriated to the board to make grants
19 pursuant to Subsections D and E of Section 4 of the
20 Telecommunications Development Act and for administration
21 functions conducted pursuant to that act. Expenditures from
22 the fund shall be by warrant of the secretary of finance and
23 administration upon vouchers signed by the secretary of
24 economic development or his authorized representative.

25 Section 7. [NEW MATERIAL] TELECOMMUNICATIONS DEVELOPMENT

. 143282. 2

underscored material = new
[bracketed material] = delete

1 AND COMPETITION FUND. --

2 A. The "telecommunications development and
3 competition fund" is created in the state treasury. The fund
4 shall consist of:

5 (1) the allocation by the board of
6 distributions from the distributions of the utility inspection
7 fee pursuant to Section 63-7-20 NMSA 1978;

8 (2) private grants or contributions;

9 (3) legislative appropriations; and

10 (4) federal or local government grants.

11 B. Earnings to the fund shall be credited to the
12 fund, and the fund shall not revert at the end of any fiscal
13 year. The fund shall be administered by the department, and
14 money in the fund is appropriated to the department for
15 expenditure pursuant to Section 5 of the Telecommunications
16 Development Act. Expenditures from the fund shall be by
17 warrant of the secretary of finance and administration upon
18 vouchers signed by the secretary of economic development or his
19 authorized representative.

20 Section 8. Section 63-7-20 NMSA 1978 (being Laws 1951,
21 Chapter 194, Section 1, as amended) is amended to read:

22 "63-7-20. UTILITY AND CARRIER INSPECTION-- FEE. -- Each
23 utility and carrier doing business in this state [~~which~~] that
24 is subject to the control and jurisdiction of the commission by
25 virtue of the provisions of Article 11 of the constitution of

. 143282. 2

underscored material = new
[bracketed material] = delete

1 New Mexico with respect to its rates and service shall pay
2 annually to the commission a fee in performance of its duties
3 as now provided by law. The fee for carriers shall not exceed
4 one-fourth of one percent of its gross receipts from business
5 transacted in New Mexico for the preceding calendar year. The
6 fee for utilities shall not exceed one-half of one percent of
7 its gross receipts from business transacted in New Mexico for
8 the preceding calendar year. This sum shall be payable
9 annually on or before January 20 or in equal quarterly
10 installments on or before January 20, April 20, July 20 and
11 October 20 in each year. No similar fee shall be imposed upon
12 the utility or carrier. In the case of utilities or carriers
13 engaged in interstate business, the fees shall be measured by
14 the gross receipts of the utilities or carriers from intrastate
15 business only for the preceding calendar year and not in any
16 respect upon receipts derived wholly or in part from interstate
17 business. As used in this section, "utility" includes
18 ~~[telephone companies]~~ telecommunications companies regulated
19 pursuant to the New Mexico Telecommunications Act, cable
20 telecommunications providers, wireless telecommunications
21 providers, wireless paging providers and transmission
22 companies. "

23 Section 9. Section 63-7-21 NMSA 1978 (being Laws 1951,
24 Chapter 194, Section 2, as amended) is amended to read:

25 "63-7-21. DISPOSITION OF FEES. --

. 143282. 2

underscored material = new
[bracketed material] = delete

1 A. All ~~[moneys]~~ money collected under the
2 provisions of ~~[Chapter 194, Laws of 1951]~~ Section 63-7-20 NMSA
3 1978 from a utility that paid a fee pursuant to that section in
4 fiscal year 2003 or that utility's successor in interest and
5 all money collected under that section from a carrier shall be
6 deposited with the state treasurer and by him credited to the
7 general fund.

8 B. All money collected under the provisions of
9 Section 63-7-20 NMSA 1978 after June 30, 2003 from a utility
10 that did not pay a fee pursuant to that section in fiscal year
11 2003 shall be distributed to the rural telecommunications
12 development fund."

13 Section 10. Section 63-7-23 NMSA 1978 (being Laws 1995,
14 Chapter 175, Section 1, as amended by Laws 2000, Chapter 100,
15 Section 2 and also by Laws 2000, Chapter 102, Section 2) is
16 amended to read:

17 "63-7-23. TELECOMMUNICATIONS-- ADMINISTRATIVE FINES.--

18 A. For purposes of this section:

19 (1) "commission" means the public regulation
20 commission; and

21 (2) "telecommunications provider" means any
22 telegraph company, telephone company, transmission company,
23 telecommunications common carrier, telecommunications company,
24 cellular service company or pay telephone provider regulated in
25 whole or in part by the commission under law, including the
Telephone and Telegraph Company Certification Act, the New

. 143282. 2

underscored material = new
[bracketed material] = delete

1 Mexico Telecommunications Act, the Cellular Telephone Services
2 Act and Sections 63-9E-1 and 63-9E-3 NMSA 1978.

3 B. The commission may impose an administrative fine
4 on a telecommunications provider for any act or omission that
5 the provider knew or should have known was a violation
6 of any applicable law or rule or order of the commission.

7 C. Except in the case of disputes between
8 telecommunications providers, an administrative fine of not
9 more than one thousand dollars (\$1,000) may be imposed for each
10 violation or each of multiple violations arising out of the
11 same facts up to a maximum of twenty-five thousand dollars
12 (\$25,000); or an administrative fine of not more than one
13 thousand dollars (\$1,000) may be imposed for each day of a
14 continuing violation arising out of the same facts up to a
15 maximum of twenty-five thousand dollars (\$25,000).

16 Notwithstanding any other provision of this subsection, the
17 commission may impose an administrative fine not to exceed
18 twenty-five thousand dollars (\$25,000) for a single violation:

19 (1) that results in substantial harm to the
20 customers of the telecommunications provider or substantial
21 harm to the public interest; or

22 (2) for failure to obtain a certificate of
23 public convenience and necessity required by law or for
24 operation outside the scope of that certificate.

25 D. In the case of disputes between

underscored material = new
[bracketed material] = delete

1 telecommunications providers, an administrative fine of not
2 more than one hundred thousand dollars (\$100,000) may be
3 imposed for the violation of a telecommunications provider
4 interconnection agreement, telecommunications provider
5 wholesale tariff or commission [~~regulation~~] rule or order
6 otherwise relating to the provision of services between
7 telecommunications providers. [~~An administrative fine of not~~
8 ~~more than one hundred thousand dollars (\$100,000) may be~~
9 ~~imposed for each day of a continuing violation.~~]

10 E. The amount of the fine should bear a reasonable
11 relationship to the nature and severity of the violation.

12 F. The commission shall initiate a proceeding to
13 impose an administrative fine by giving written notice to the
14 telecommunications provider that the commission has facts as
15 set forth in the notice that, if not rebutted, may lead to the
16 imposition of an administrative fine under this section and
17 that the telecommunications provider has an opportunity for a
18 hearing. The commission may only impose an administrative fine
19 by written order that, in the case of contested proceedings,
20 [~~shall be~~] is supported by a preponderance of the evidence.

21 G. The commission may initiate a proceeding to
22 impose an administrative fine within two years from the date of
23 the commission's discovery of the violation, but in no event
24 shall a proceeding be initiated more than five years after the
25 date of the violation. This limitation shall not run against

underscored material = new
[bracketed material] = delete

1 any act or omission constituting a violation under this section
2 for any period during which the telecommunications provider has
3 fraudulently concealed the violation.

4 H. The commission shall consider mitigating and
5 aggravating circumstances in determining the amount of
6 administrative fine imposed.

7 I. For purposes of establishing a violation, the
8 act or omission of any officer, agent or employee of a
9 telecommunications provider, within the scope of such person's
10 authority, duties or employment, shall be deemed the act or
11 omission of the telecommunications provider.

12 J. Any telecommunications provider or other person
13 aggrieved by an order assessing an administrative fine may
14 appeal the order to the supreme court of New Mexico. A notice
15 of appeal shall be filed within thirty days after the entry of
16 the commission's order. Notice of appeal shall name the
17 commission as appellee and shall identify the order from which
18 the appeal is taken.

19 K. The commission shall promulgate procedural rules
20 for the implementation of this section."

21 Section 11. Section 63-9A-3 NMSA 1978 (being Laws 1985,
22 Chapter 242, Section 3, as amended) is amended to read:

23 "63-9A-3. DEFINITIONS.--As used in the New Mexico
24 Telecommunications Act:

25 A. "affordable rates" means local exchange service

. 143282. 2

underscored material = new
[bracketed material] = delete

1 rates that promote universal service within a local exchange
2 service area, giving consideration to the economic conditions
3 and costs to provide service in such area;

4 B. "cable television service" means the one-way
5 transmission to subscribers of video programming or other
6 programming service and subscriber interaction, if any, that is
7 required for the selection of such video programming or other
8 programming service;

9 C. "commission" means the public regulation
10 commission;

11 D. "competitive telecommunications service" means a
12 service that, pursuant to Section 63-9A-8 NMSA 1978, has been
13 determined to be subject to effective competition [~~pursuant to~~
14 ~~Section 63-9A-8 NMSA 1978~~] or subject to developing
15 competition;

16 [~~E. "effective competition" means that the~~
17 ~~customers of the service have reasonably available and~~
18 ~~comparable alternatives to the service;~~

19 F. ~~"fund" means the New Mexico universal service~~
20 ~~fund;~~

21 G.] E. "local exchange area" means a geographic
22 area encompassing one or more local communities, as described
23 in maps, tariffs or rate schedules filed with the commission,
24 where local exchange rates apply;

25 [H.] E. "local exchange service" means the

underscored material = new
[bracketed material] = delete

1 transmission of two-way interactive switched voice
2 communications furnished by a telecommunications company within
3 a local exchange area;

4 [~~F.~~] G. "message telecommunications service" means
5 telecommunications service between local exchange areas within
6 the state for which charges are made on a per-unit basis, not
7 including wide-area telecommunications service, or its
8 equivalent, or individually negotiated contracts for
9 telecommunications services;

10 [~~J.~~] H. "noncompetitive telecommunications service"
11 means a service that has not been determined to be subject to
12 effective competition or subject to developing competition
13 pursuant to Section 63-9A-8 NMSA 1978;

14 [~~K.~~] I. "private telecommunications service" means
15 a system, including the construction, maintenance or operation
16 thereof, for the provision of telecommunications service, or
17 any portion of that service, by a person for the sole and
18 exclusive use of that person and not for resale, directly or
19 indirectly. For purposes of this definition, the person that
20 may use such service includes any affiliates of the person if
21 at least eighty percent of the assets or voting stock of the
22 affiliates is owned by the person. If any other person uses
23 the telecommunications service, whether for hire or not, the
24 private telecommunications service is a public
25 telecommunications service;

. 143282. 2

underscored material = new
[bracketed material] = delete

1 ~~[L-]~~ J. "public telecommunications service" means
2 the transmission of signs, signals, writings, images, sounds,
3 messages, data or other information of any nature by wire,
4 radio, lightwaves or other electromagnetic means originating
5 and terminating in this state regardless of actual call
6 routing. "Public telecommunications service" does not include
7 the provision of terminal equipment used to originate or
8 terminate such service; private telecommunications service;
9 broadcast transmissions by radio, television and satellite
10 broadcast stations regulated by the federal communications
11 commission; radio common carrier services; ~~[including mobile
12 telephone service and radio paging]~~ or one-way cable television
13 service; and

14 ~~[M-]~~ K. "telecommunications company" means a person
15 that provides public telecommunications service. "

16 Section 12. Section 63-9A-8 NMSA 1978 (being Laws 1985,
17 Chapter 242, Section 8, as amended) is amended to read:

18 "63-9A-8. REGULATION OF RATES AND CHARGES. --

19 A. In accordance with the policy established in the
20 New Mexico Telecommunications Act, the commission shall, by its
21 own motion or upon petition by any interested party, hold
22 hearings to determine if ~~[any]~~ a public telecommunications
23 service, part of service or category of services is subject to
24 effective competition in the relevant market area. When the
25 commission has made a determination that a service, ~~[or]~~ part

. 143282. 2

underscored material = new
[bracketed material] = delete

1 of [a] service or category of services is subject to effective
2 competition, the commission shall ~~[consistent with the purposes~~
3 ~~of the New Mexico Telecommunications Act, modify, reduce or~~
4 ~~eliminate rules, regulations and other requirements applicable~~
5 ~~to the provision of such service, including the fixing and~~
6 ~~determining of specific rates, tariffs or fares for the~~
7 ~~service. The commission's action may include the detariffing~~
8 ~~of service or the establishment of minimum rates which will~~
9 ~~cover the costs for the service. Such modification shall be~~
10 ~~consistent with the maintenance of the availability of access~~
11 ~~to local exchange service at affordable rates and comparable~~
12 ~~message telecommunication service rates, as established by the~~
13 ~~commission, for comparable markets or market areas, except that~~
14 ~~volume discounts or other discounts based on reasonable~~
15 ~~business purposes shall be permitted] not regulate rates,~~
16 tariffs, fares, investment or quality of service standards for
17 the service, part of service or category of services. Upon
18 petition or request of an affected telecommunications company,
19 the commission, upon a finding that the requirements of
20 Subsection [C] B of this section are met, shall eliminate or
21 modify the same or similar regulatory requirements for those
22 providers of comparable public telecommunications services in
23 the same relevant markets so that there shall be parity of
24 regulatory standards and requirements for all such providers.

25 [B. ~~In determining whether a service is subject to~~

underscored material = new
[bracketed material] = delete

1 ~~effective competition, the commission shall consider the~~
2 ~~following:~~

3 ~~(1) the extent to which services are~~
4 ~~reasonably available from alternate providers in the relevant~~
5 ~~market area;~~

6 ~~(2) the ability of alternate providers to make~~
7 ~~functionally equivalent or substitute services readily~~
8 ~~available at competitive rates, terms and conditions; and~~

9 ~~(3) existing economic or regulatory barriers.]~~

10 B. The commission shall determine that a service,
11 part of service or category of services is subject to effective
12 competition in the relevant market area if it finds that:

13 (1) the service, part of service or category
14 of services is being offered to end-user customers in the
15 relevant market area by at least two other providers of the
16 public telecommunications service, mobile or wireless telephone
17 service, radio paging service or cable telecommunications
18 service;

19 (2) at least two of the other providers of the
20 public telecommunications service, mobile or wireless telephone
21 service, radio paging service or cable telecommunications
22 service offering the service, part of service or category of
23 services are not subject to rate or price regulation; and

24 (3) pursuant to 47 USCA 271, the federal
25 communications commission has approved an application by the

. 143282. 2

underscored material = new
[bracketed material] = delete

1 provider of the service, part of service or category of
2 services or the commission finds that the provider's network is
3 open to use by other telecommunications companies.

4 C. In accordance with the policy established in the
5 New Mexico Telecommunications Act, the commission shall, by its
6 own motion or upon petition by any interested party, hold
7 hearings to determine if a public telecommunications service,
8 part of service or category of services is subject to
9 developing competition in the relevant market area. Except as
10 provided in Subsection E of this section, when the commission
11 has made a determination that a telecommunications company's
12 service, part of service or category of services is subject to
13 developing competition, the telecommunications company may
14 decrease by no more than fifty percent annually or increase by
15 no more than twenty percent annually the price for the service,
16 part of service or category of services. The
17 telecommunications company may also charge different rates or
18 prices for the same service, part of service or category of
19 services that is subject to developing competition in the
20 relevant market area. Upon petition or request of an affected
21 telecommunications company, the commission upon a finding that
22 the requirements of Subsection D of this section are met shall
23 modify the same regulatory requirements for those providers of
24 comparable public telecommunications services in the same
25 relevant market areas so that there shall be parity of

. 143282. 2

underscored material = new
[bracketed material] = delete

1 regulatory standards and requirements for all such providers.

2 D. The commission shall determine that a service,
3 part of service or category of services is subject to
4 developing competition in the relevant market area if it finds
5 that:

6 (1) the service, part of service or category
7 of services is being offered to end-user customers in the
8 relevant market area by one other provider of the public
9 telecommunications service, mobile or wireless telephone
10 service, radio paging service or cable telecommunications
11 service;

12 (2) the other provider of the public
13 telecommunications service, mobile or wireless telephone
14 service, radio paging service or cable telecommunications
15 service offering the service, part of service or category of
16 services is not subject to rate or price regulation; and

17 (3) pursuant to 47 USCA 271, the federal
18 communications commission has approved an application by the
19 provider of the service, part of service or category of
20 services or the commission finds that the provider's network is
21 open to use by other telecommunications companies.

22 E. The pricing of a service, part of service or
23 category of services pursuant to Subsection C of this section
24 shall apply to an incumbent local exchange carrier subject to
25 an alternative form of regulation pursuant to Subsection C of

. 143282. 2

underscored material = new
[bracketed material] = delete

1 Section 63-9A-8.2 NMSA 1978 only after the termination date
2 stated in the order or rule prescribing the alternative form of
3 regulation as the order or rule existed on July 1, 2003. After
4 the termination date stated in the order or rule, the
5 telecommunications company may decrease by no more than twenty
6 percent annually or increase by no more than ten percent
7 annually the rate of any public telecommunications service upon
8 thirty days' notice to the commission. The rate change shall
9 be reviewed by the commission only if a written protest, signed
10 by not less than two and one-half percent of all affected
11 subscribers, is filed with the commission within thirty days
12 after notice of the rate change is sent to affected
13 subscribers. The protest shall specifically set forth the
14 particular rate as to which review is requested, the reasons
15 for the requested review and the relief desired. Upon notice,
16 the commission may suspend the protested rates during the
17 proceedings and reinstate the rates previously in effect.
18 Within ninety days after the filing of the protest, the
19 commission shall determine if the rates proposed are fair, just
20 and reasonable.

21 F. Until changed pursuant to the provisions of this
22 section, alternative rates in effect for an incumbent local
23 exchange carrier pursuant to Subsection C of Section 63-9A-8.2
24 NMSA 1978 shall remain in effect after the termination date
25 stated in the rule or order prescribing the alternative form of

. 143282. 2

underscored material = new
[bracketed material] = delete

1 regulation.

2 G. A hearing before the commission pursuant to
3 Subsection A or C of this section shall be completed within
4 ninety days after the petition or motion initiating the hearing
5 process is filed.

6 [~~E.~~] H. No provider of public telecommunications
7 service may use current revenues earned or expenses incurred in
8 conjunction with any noncompetitive service to subsidize
9 competitive public telecommunications services. In order to
10 avoid cross-subsidization of competitive services by
11 noncompetitive telecommunications services, prices or rates
12 charged for a competitive telecommunications service shall
13 cover the cost for the provision of the service. In any
14 proceeding held pursuant to this section, the party providing
15 the service shall bear the burden of proving that the prices
16 charged for competitive telecommunications services cover cost.

17 [~~D.~~] I. The commission may, upon its own motion or
18 on the petition of an interested party and after notice to all
19 interested parties and customers and a hearing, reclassify any
20 service previously determined to be a competitive
21 telecommunications service if after a hearing the commission
22 finds that a service is not subject to effective competition."

23 Section 13. Section 63-9A-8.1 NMSA 1978 (being Laws 1998,
24 Chapter 108, Section 61) is amended to read:

25 "63-9A-8.1. CHANGE IN RATES. --

. 143282. 2

underscored material = new
[bracketed material] = delete

1 A. Except as provided in Section 63-9A-8 NMSA 1978,
2 at a hearing involving an increase in rates or charges sought
3 by a telecommunications company, the burden of proof to show
4 that the increased rate or charge is just and reasonable shall
5 be upon the company.

6 B. Except as provided in Section 63-9A-8 NMSA 1978,
7 unless the commission otherwise orders, no telecommunications
8 company shall make a change in an established rate except after
9 thirty days' notice to the commission, which notice shall
10 plainly state the changes proposed to be made in the rates then
11 in force, the time when the changed rates will go into effect
12 and other information as the commission by rule requires. The
13 telecommunications company shall also give notice of the
14 proposed changes to other interested persons as the commission
15 may direct. All proposed changes shall be shown by filing new
16 schedules that shall be kept open to public inspection. The
17 commission for good cause shown may allow changes in rates
18 without requiring the thirty days' notice, under conditions
19 that it may prescribe.

20 ~~[C. Whenever a telecommunications company files a~~
21 ~~complete application proposing new rates, the commission may,~~
22 ~~upon complaint or upon its own initiative, except as otherwise~~
23 ~~provided by law, upon reasonable notice, enter upon a hearing~~
24 ~~concerning the reasonableness of the proposed rates. If the~~
25 ~~commission determines a hearing is necessary, it shall suspend~~

underscored material = new
[bracketed material] = delete

1 ~~the operation of the proposed rates before they become~~
2 ~~effective but not for a longer initial period than nine months~~
3 ~~beyond the time when the rates would otherwise go into effect,~~
4 ~~unless the commission finds that a longer time will be~~
5 ~~required, in which case the commission may extend the period~~
6 ~~for an additional three months. The commission shall hear and~~
7 ~~decide cases with reasonable promptness. The commission shall~~
8 ~~adopt rules identifying criteria for various rate and tariff~~
9 ~~filings to be eligible for suspension periods shorter than what~~
10 ~~is allowed by this subsection and to be eligible for summary~~
11 ~~approval without hearing.~~

12 ~~D.]~~ C. Except as provided in Section 63-9A-8 NMSA
13 1978, if after a hearing the commission finds the proposed
14 rates to be unjust, unreasonable or in any way in violation of
15 law, the commission shall determine the just and reasonable
16 rates to be charged or applied by the telecommunications
17 company for the service in question and shall fix the rates by
18 order to be served upon the telecommunications company; or the
19 commission by its order shall direct the telecommunications
20 company to file new rates respecting such service that are just
21 and reasonable. Those rates shall thereafter be observed until
22 changed as provided by the New Mexico Telecommunications Act. "

23 Section 14. Section 63-9A-8.2 NMSA 1978 (being Laws 2000,
24 Chapter 100, Section 4 and Laws 2000, Chapter 102, Section 4,
25 as amended) is amended to read:

. 143282. 2

1 "63-9A-8.2. IDENTIFYING SUBSIDIES-- RULES-- PRICE CAPS. --

2 A. No later than December 31, 2000, the commission
3 shall review existing rates for public telecommunications
4 services offered by incumbent local exchange carriers with more
5 than fifty thousand access lines and identify all subsidies
6 that are included in the rates. The commission shall issue
7 rules requiring that the identified subsidies appear on
8 customer bills and establish a schedule not later than April 1,
9 2001 whereby implicit subsidies be eliminated through
10 implementation of the state rural universal service fund or
11 through revenue-neutral rate rebalancing or any other method
12 consistent with the intent of the New Mexico Telecommunications
13 Act.

14 B. [~~No later than January 1, 2001~~] The commission
15 shall adopt rules that:

16 (1) apply equally to all public
17 telecommunications companies offering or providing services in
18 the same area, regardless of whether the services have been
19 determined to be competitive telecommunications services;

20 [~~(1)~~] (2) establish consumer protection and
21 quality-of-service standards;

22 [~~(2)~~] (3) ensure adequate investment in the
23 telecommunications infrastructure in both urban and rural areas
24 of the state;

25 [~~(3)~~] (4) promote availability and deployment

underscored material = new
[bracketed material] = delete

1 of high-speed data services in both urban and rural areas of
2 the state;

3 [~~(4)~~] (5) ensure the accessibility of
4 interconnection by competitive local exchange carriers in both
5 urban and rural areas of the state; and

6 [~~(5)~~] (6) establish an expedited regulatory
7 process for considering matters related to telecommunications
8 services that are pending before the commission.

9 C. [~~No later than April 1, 2001, but in no case~~
10 ~~prior to the adoption of the rules required in Subsection B of~~
11 ~~this section]~~ The commission shall eliminate rate of return
12 regulation of incumbent telecommunications carriers with more
13 than fifty thousand access lines and implement an alternative
14 form of regulation that includes reasonable price caps for
15 basic residence and business local exchange services.

16 D. Except for incumbent rural telecommunications
17 carriers included in Paragraph (1) of Subsection B of this
18 section and therefore subject to the rules adopted pursuant to
19 that subsection, rules adopted pursuant to this section shall
20 not be applied to incumbent rural telecommunications carriers
21 as that term is defined in Subsection I of Section 63-9H-3 NMSA
22 1978. "

23 Section 15. A new section of the New Mexico
24 Telecommunications Act, Section 63-9A-8.4 NMSA 1978, is enacted
25 to read:

. 143282. 2

underscored material = new
[bracketed material] = delete

1 "63-9A-8.4. [NEW MATERIAL] TERMINATION OF RURAL EXTENSION
2 FUNDS. --

3 A. As used in this section, "rural extension fund"
4 means a fund reserved, set aside or in any other manner accrued
5 by a telecommunications company pursuant to an order, rule,
6 tariff or other requirement of the commission for the purpose
7 of supporting or subsidizing the extension of lines or
8 facilities by the telecommunications company to serve customers
9 in rural or other low-density service areas.

10 B. After June 30, 2003, the commission shall not
11 require a telecommunications company to establish or maintain a
12 rural extension fund. The obligation of a telecommunications
13 company to reserve, set aside or in any other manner accrue
14 additional money to an existing rural extension fund shall
15 terminate on July 1, 2003.

16 C. A telecommunications company with an accrued,
17 unspent balance in a rural extension fund as of July 1, 2003
18 shall apply the balance in accordance with the requirements of
19 that fund until the balance is expended; provided, however,
20 that the telecommunications company may offset and credit
21 against the balance all contributions by the telecommunications
22 company to the rural telecommunications development fund."

23 Section 16. Section 63-9A-9 NMSA 1978 (being Laws 1985,
24 Chapter 242, Section 9, as amended) is amended to read:

25 "63-9A-9. REGULATION OF INDIVIDUAL CONTRACTS TO

. 143282. 2

underscored material = new
[bracketed material] = delete

1 FACILITATE COMPETITION. --

2 A. Except for services that are determined by the
3 commission to be competitive telecommunications services, in
4 accordance with the provisions of this section, the commission
5 shall regulate the rates, charges and service conditions for
6 individual contracts for public telecommunications services in
7 a manner [~~which~~] that facilitates effective competition and
8 shall authorize the provision of all or any portion of a public
9 telecommunications service under stated or negotiated terms to
10 any person or entity that has acquired or is preparing to
11 acquire, through construction, lease or any other form of
12 acquisition, similar public telecommunications services from an
13 alternate source.

14 B. At any time, the provider of public
15 telecommunications services may file a verified application
16 with the commission for authorization to provide a public
17 telecommunications service on an individual contract basis.
18 The application shall describe the telecommunications services
19 to be offered, the party to be served and the parties offering
20 the service, together with such other information and in such
21 form as the commission may prescribe. Such additional
22 information shall be reasonably related to the determination of
23 the existence of a competitive offer. A determination of
24 effective competition pursuant to Section 63-9A-8 NMSA 1978
25 shall not be necessary to file an application or to have an

. 143282. 2

underscored material = new
[bracketed material] = delete

1 application granted by the commission pursuant to this section.

2 C. The commission shall approve or deny any such
3 application within ten days or such other period as shall be
4 established by the commission, not to exceed sixty days, giving
5 consideration to the requirements of any contract negotiations.
6 If the commission has not acted on any application within the
7 time period established, the application shall be deemed
8 granted. The commission shall deny the application only upon a
9 finding that the application fails to set forth prescribed
10 information or that the subject or comparable services are not
11 being offered to the customer by parties other than the
12 applicant or that the contract fails to cover the costs of the
13 service.

14 D. Within ten days after the conclusion of
15 negotiations, the provider of public telecommunications
16 services shall file with the commission the final contract or
17 other evidence of the service to be provided, together with the
18 charges and other conditions of the service, which shall be
19 maintained by the commission on a confidential basis subject to
20 an appropriate protective order. "

21 Section 17. EFFECTIVE DATE. --The effective date of the
22 provisions of this act is July 1, 2003.

23 - 29 -

24
25 . 143282. 2

- 29 -